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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,211	03/24/2004	Albert N. Santilli	SPE-15433	3932

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EXAMINER
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BROWN, MICHAEL A

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 08/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/808,211	<b>Applicant(s)</b> SANTILLI ET AL.	
	<b>Examiner</b> Michael Brown	<b>Art Unit</b> 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 24-28 is/are allowed.
- 6) ☒ Claim(s) 1-7 and 19-23 is/are rejected.
- 7) ☒ Claim(s) 8-18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6-25-04</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 3-5 are U.S.C. 102(b) as being anticipated by Newman.

Newman discloses in figures 1-7 a surgical drape comprising a first closed container (11, 12), having a portion 13, that can be selectively opened to form first opening (fig. 4, the opening at the top of the container), the container is sized and shaped so a person can be placed atop the container, a first sheet 30, the first container is made of a fluid impervious material ((polyethylene and polyolefin) and the drape includes a pull tab (any edge of the drape can be pulled like a tab).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Newman in view of Mixon.

Newman discloses in figures 1-5, a surgical drape, substantially as claimed. However, Newman doesn't disclose the drape being liquid impermeable. Mixon teaches in col. 3, lines 45-56, a surgical drape made of a liquid impermeable material. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the drape disclosed by Newman could be fabricated of a liquid impermeable material as taught by Mixon in order to prevent liquid from passing through the drape during a surgical procedure.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Newman in view of Alpern.

Newman discloses in figures 1-5 a surgical drape, substantially as claimed. However, Newman doesn't disclose the selectively openable portion of the container being defined by scores. Alpern teaches in figure 4, col. 4, lines 40-45 a container having selectively openable portions defined by scores (col. 4, lines 40-45). It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the scores as taught by Alpern could be incorporated into the portion of the container that is selectively openable in order to use the score to open and remove the drape.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Newman in view of Kraus.

Newman discloses in figures 1-5 a surgical drape, substantially as claimed. However, Newman doesn't disclose an adhesive on the outer surface of the container or a removable protective layer disposed over the adhesive. Kraus teaches in figures 1-

4 a container comprising an adhesive 20 and a removable protective layer (12, 14). It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the adhesive and the protective layer as taught by Kraus could be incorporated into the container disclosed by Newman in order to use the adhesive to hold the container closed until the drape is to be removed and used in a surgical procedure. The protective layer could be used to protect the adhesive.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Newman in view of Winters.

Newman discloses in figures 1-5 a surgical drape, substantially as claimed. However, Newman doesn't disclose a layer of adhesive about the periphery of the sheet. Winters teaches in figure 1 a surgical drape comprising adhesive about the periphery of the drape (col. 5, lines 15-20). It would have been obvious to one having ordinary skill in the art at the time that the invention was made that sheet disclosed by Newman could have adhesive about its periphery as taught by Winters in order to use the adhesive to attach the drape to the patient.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Newman in view of Rothrum.

Newman discloses in figures 1-5 a surgical drape, substantially as claimed. However, Newman doesn't disclose a pouch container having a large opening at a first end, and a small selectively openable opening at the second end and adhesive adjacent the large end. Rothrum teaches in figures 1-4 a surgical drape comprising a pouch 28, having a large opening on one end (fig. 1a), a small selectively openable opening (at

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26), at a second smaller end and an adhesive 72 adjacent the large end. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the pouch as taught by Rothrum could be attached to the drape disclosed by Newnan in order to use the pouch to collect body fluids during a surgical procedure. The adhesive could be used to attach the pouch to the drape.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Newman in view of Mixon, along with Esposito.

Newman discloses in figures 1-5, a surgical drape, substantially as claimed. However, Newman doesn't disclose the drape being liquid impermeable. Mixon teaches in col. 3, lines 45-56, a surgical drape made of a liquid impermeable material. Esposito teaches in figure 7 a container 10, having an adhesive layer 58 on its outer surface. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the drape disclosed by Newman could be fabricated of a liquid impermeable material as taught by Mixon in order to prevent liquid from passing through the drape during a surgical procedure. The adhesive as taught by Esposito could be placed on the outer surface of the container disclosed by Newman in order to hold the container in place.

#### ***Allowable Subject Matter***

Claims 8-18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 24-28 allowed.

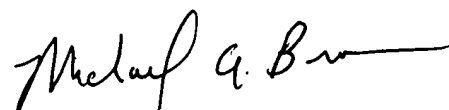
### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. No additional prior art was cited in this office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is 571-272-4972. The examiner can normally be reached on 5:30 am-4:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gergory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



M. Brown  
August 17, 2006

**MICHAEL A. BROWN  
PRIMARY EXAMINER**